

STATEMENT OF EMERGENCY 603 KAR 10:011E

This emergency repealer is being promulgated in order to repeal three (3) obsolete administrative regulations identified as 603 KAR 10:002 (Definitions for 603 KAR Chapter 10) 603 KAR 10:010 (Static advertising devices), and 603 KAR 10:021 (Electronic advertising devices). These regulations are being replaced by 603 KAR 10:040E which is being filed pursuant to the requirements established within House Bill 328 from the 2021 Regular Session of the General Assembly effective as the result of an emergency provision on March 18, 2021. House Bill 328 was precipitated by an April 24, 2020 decision of the 6th Circuit Federal Court which found KRS 177.830 through 177.890 and 603 KAR 10:002, 10:010, and 10:021 as unconstitutional on their face. The General Assembly directed that the administrative regulation associated with House Bill 328 be promulgated on or before August 1, 2021 and that reasonable standards for advertising devices be enacted to ensure the continued safety of the traveling public. In response to this directive, it was determined that the ordinary administrative regulation process required a longer period of time to complete than was allotted by the General Assembly and as such, implementation of this emergency repealer is required to meet the general assembly deadline. With the establishment of new guidelines and requirements to regulate advertising devices provided for within 603 KAR 10:040E, the immediate repeal of 603 KAR 10:002, 10:010, and 10:021 should be implemented pursuant to this emergency repealer to eliminate conflicts of law. An ordinary administrative regulation will not be filled with this emergency repealer.

ANDY BESHEAR, Governor
JIM GRAY, Secretary

TRANSPORTATION CABINET Department of Highways Division of Maintenance (Emergency Repealer)

603 KAR 10:011E. Repeal of 603 KAR 10:002, 10:010, and 10:021.

EFFECTIVE: July 30, 2021

RELATES TO: KRS 177.572 - 177.576, 177.830 - 177.890, 177.990(2), 23 C.F.R. Part 750, 23 U.S.C. 131

STATUTORY AUTHORITY: KRS 177.860, 23 U.S.C. 131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 requires the Commissioner of the Department of Highways to promulgate administrative regulations establishing standards for advertising devices. KRS 177.890 authorizes the Commissioner of the Department of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. 23 U.S.C. 131, the Highway Beautification Act, authorizes retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices. These administrative regulations are being repealed because they are obsolete and no longer necessary and because a new administrative regulation will govern this subject matter.

Section 1. The following administrative regulations are hereby repealed:

(1) 603 KAR 10:002, Definitions for 603 KAR Chapter 10;

- (2) 603 KAR 10:010, Static advertising devices; and
- (3) 603 KAR 10:021, Electronic advertising devices.

JIM GRAY, Secretary

JAMES BALLINGER, State Highway Engineer

APPROVED BY AGENCY: July 27, 2021

FILED WITH LRC: July 30, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 a.m. on September 22, 2021 at the Transportation Cabinet, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jon Johnson, Staff Attorney Manager/Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email jon.johnson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jon Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals three (3) administrative regulation: 603 KAR 10:002, 603 KAR 10:010, and 603 KAR 10:021.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal three (3) obsolete administrative regulations that are being replaced by 603 KAR 10:040.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms to KRS 177.860 by establishing parameters of both prohibited and conforming activities relative to advertising devices and the safety of the users of the highways

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repealer will remove three (3) administrative regulation that are obsolete or no longer necessary to the operations of the Transportation Cabinet.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Advertising Device Owners, Landowners, Advertisers, KYTC, County & City Municipalities

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Advertising devices will be now be regulated by 603 KAR 10:040.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation:

(a) Initially: There are no costs for this repealer.

(b) On a continuing basis: There are no costs for this repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no fees involved with this repealer.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation repealer does not establish any fees or directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? No, this is a repealer of three (3) obsolete administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? KYTC Department of Highways, Division of Maintenance, KYTC District Offices, KYTC Office of Legal Services, and County and City Local Municipalities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310 authorizes the cabinet to repeal an administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation repealer will not affect expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation repealer will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation repealer will not generate revenue.

(c) How much will it cost to administer this program for the first year? There are no costs involved in this regulation repealer.

(d) How much will it cost to administer this program for subsequent years? There are no costs involved in this regulation repealer.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: